

RECEIVED

Apr 15 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Alex Human, Circuit Court Judge

Appellate No. 2023-001311
Civil Action No.: 2023-CP-22-00410

William SteinerAppellant,

v.

Wedgefield Plantation Association and Johnathan Rutstein, President Respondents.

**RESPONDENTS WEDGEFIELD PLANTATION ASSOCIATION AND JOHNATHAN
RUTSTEIN’S MOTION TO STRIKE MATTER AND EXCLUDE FROM RECORD ON
APPEAL**

WALL TEMPLETON & HALDRUP, P.A.
Morgan S. Templeton (15456)
Ford H. Thrift (103294)
Wall Templeton & Haldrup, P.A.
145 King Street, Suite 300
Post Office Box 1200
Charleston, South Carolina 29402
(843) 329-9500
Attorneys for Respondents Wedgefield Plantation
Association and Jonathan Rutstein

Respondents Wedgefield Plantation Association and Johnathan Rutstein, President, move before this Honorable Court for an Order striking all exhibits from the Appellant's Initial Brief¹ and further striking Exhibits 1, 2, 4, 7 and pages 9 through 34 of Exhibit 6 from the Record on Appeal. The basis of this motion is that these exhibits are improperly attached to the Appellant's initial brief and also contain materials that were not presented to the Circuit Court and cannot be considered on appeal. Under Rules 12(b)(6), SCRCF, and Rule 210, SCACR, this Court may only consider those materials which were included as part of the Appellant's complaint and submitted to the Circuit Court. The Appellant's exhibits do not meet these criteria and cannot be considered.

As an initial matter, this Court must strike all exhibits from the Appellant's initial brief because the South Carolina Appellate Court Rules do not allow for briefs to contain exhibits. As it was submitted to these Respondents, the Appellant's initial brief includes seven (7) exhibits containing internet articles, copies of statutes, photographs, and other materials that Appellant purportedly includes as evidence supporting his case.² Rule 208(b), SCACR, which governs the content of initial briefs, does not allow for the inclusion of exhibits or other materials. Instead, such materials must be included in the Record on Appeal as governed by Rule 210, SCACR³. As such, this Court must strike all exhibits from Appellant's initial brief.

Next, this Court should strike Appellant's Exhibits 1, 2, 4, 7 and pages 9 through 34 of Exhibit 6 from the Record on Appeal because they were not submitted to the Circuit Court. Appellate briefs may refer to materials included in the Record on Appeal, but briefs may not include reference to materials not properly included in the Record on Appeal. Rule 207(b)(4),

¹ As submitted to Respondents, the document titled "Initial Brief - Appellant (Attempted)" contains seven (7) exhibits. At the least, these materials are not proper for inclusion in the Record on Appeal but Respondents also seek to strike them from Appellant's brief to the extent that they are included therein.

² Exhibit 3 is the hearing transcript and Exhibit 5 is the Appellant's complaint.

³ Indeed, the very purpose of filing initial briefs followed by final briefs is in part to allow the parties to complete the Record on Appeal. *See* Rule 211(b), SCACR (requiring final briefs to be identical to initial briefs with the exception of citations to the record).

SCACR; Rule 210(c), SCACR. Rule 210(c), SCACR, provides, in relevant part, that “[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal.” In other words, if the materials are not allowed to be included in the Record on Appeal, then a party cannot make references to those materials in their briefs. As this matter concerns the appeal of an order granting a motion to dismiss, the only materials that may be considered are those which were included in the Appellant’s complaint. “In deciding a motion to dismiss pursuant to 12(b)(6), SCRCF, the trial court should consider only the allegations set forth on the face of the plaintiff’s complaint.” *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). Although exhibits may be included in a complaint, this Court cannot consider the Appellant’s exhibits unless they were attached to the complaint pursuant to Rule 10(c), SCRCF.

In this case, the Appellant’s complaint included seven (7) pages of allegations and eight (8) pages of exhibits. These exhibits were a document titled “Committee Reports,” purported to be HOA Board Meeting Minutes from “3/19” and two letters – one dated September 30, 2019, and one dated August 19, 2019. (*See Compl.*, filed May 22, 2023, at pp. 11-18). They do not, however, include Appellant’s Exhibits 1, 2, 4, 7, and certain portions of Exhibit 6. Exhibit 1 of Appellant’s initial brief purports to be a 2017 article written for an issue of South Carolina Lawyer magazine. Exhibit 2 purports to be a copy of the rules, policies, and regulations of the Wedgefield Plantation HOA and state laws to ensure compliance. Exhibit 4 is labeled as “REASONS FOR MOTION TO DISMISS,” and appears to be additional arguments in support of Appellant’s brief. It is not, however, the Appellant’s brief and it was not presented to the Circuit Court. Exhibit 7 is a packet of some thirty-four photographs that the Appellant describes as “Pictures of Live Oak Construction Company’s Supply and Equipment Depot at 127 Live Oak Lane, Georgetown, South Carolina.” Neither of these exhibits were presented to the Circuit Court nor were they included in the

Appellant’s Complaint. As it is filed on record with the Georgeotwn County Clerk of Court, the Appellant’s Complaint is a mere 18 pages, including the civil action coversheet and summons. (*See* Compl., filed May 22, 2023). A plain review of this complaint shows that these exhibits are not proper matters for inclusion in the record on appeal and should be stricken.

As an additional matter, Exhibit 6 is labeled “Board Meeting Minutes and Letters to The. [sic] HOA and Their Attorney.” It purports to include supplemental evidence of the dispute between the Appellant and the Respondents. Although it supports the Respondents’ motion to dismiss by detailing events occurring well over three years prior to the filing of Appellant’s Complaint, these materials were not included in the original complaint and cannot be considered. To be sure, *some* of these materials were included in the complaint but only pages 1 through 8 of Exhibit 6.⁴ A comparison of pages 9 through 34 of the exhibit were not part of the original complaint. As such, these portions of Exhibit 6 must be stricken from the record on appeal as they are not a proper matter for inclusion in the record on appeal pursuant to Rule 210, SCACR.

Based upon the foregoing, the Respondents respectfully request that this Honorable Court issue an Order striking all exhibits from Appellant’s initial brief and striking Exhibits 1, 2, 4, 7 and pages 9 through 34 of Exhibit 6 from the Record on Appeal.

Dated this 15th day of April, 2024

s/Ford H. Thrift
Morgan S. Templeton (15456)
Ford H. Thrift (103294)
Wall Templeton & Haldrup, P.A.
145 King Street, Suite 300
Post Office Box 1200
Charleston, South Carolina 29402
(843) 329-9500

⁴ Page of 8 Exhibit 6 appears different in format than page 18 of the Appellant’s complaint, but it appears to be generally the same substance.

RECEIVED

Apr 15 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Alex Hyman, Circuit Court Judge

Appellate No. 2023-001311
Civil Action No.: 2023-CP-22-00410

William SteinerAppellant,

v.

Wedgefield Plantation Association and Johnathan Rutstein, President Respondents.

PROOF OF SERVICE

I, Ford H. Thrift, of Wall Templeton & Haldrup, do hereby certify that I have served the Respondents' Motion to Strike Matter and Exclude from Record on Appeal by depositing the same in the United States Mail, properly posted on April 15, 2024 addressed as follows to Plaintiff, *pro se*:

William Steiner
180 Live Oak Lane
Georgetown, South Carolina 29440
Plaintiff, pro se

Date: April 15, 2024

s/Ford H. Thrift
Ford H. Thrift (103294)
Morgan S. Templeton (15456)
Wall Templeton & Haldrup, P.A.
145 King Street, Suite 300
Post Office Box 1200
Charleston, South Carolina 29402



Wall Templeton
ATTORNEYS

Ford H. Thrift
Ford.Thrift@WallTempleton.com
Telephone: 843.329.9500 Ext. 201
Facsimile: 843.329.9501

April 15, 2024

The Honorable Jerry Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
Apr 15 2024
SC Court of Appeals

RE: *William Steiner v. Wedgefield Plantation Association, et al*
Civil Action No.: 2023-CP-22-00410
Appellate No.: 2023-001311
Claim No.: 300-340603-2023

Dear Mr. Kitchings:

Please find enclosed an original and seven copies of Respondents' Motion to Strike Matter and Exclude from Record on Appeal and Proof of Service in the above referenced matter. I am also enclosing the requisite \$25 filing fee.

By copy of this letter to the Plaintiff, *pro se*, I am serving him with the Respondents' Motion to Strike Matter and Exclude from Record on Appeal and Proof of Service.

Thank you for your time and attention to this matter.

Sincerely,

WALL TEMPLETON & HALDRUP, P.A.

Ford H. Thrift

FHT/sjs
enclosure